Docket # 96-45

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MEMORANDUM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Magalie Roman Salas, Secretary

From: Jim Casserly

Re: Report of ex parte discussions

The following information is provided to ensure that there is an appropriate public record of communications from Congress and the Administration that may be regarded as being of "substantial significance and clearly intended to affect the ultimate decision" of an issue in CC Docket No. 96-45. Also, so as to assist in the preparation of a response to the December 19 inquiry from Commerce Committee Chairmen McCain and Bliley, this report covers communications from, as well as to, decisionmaking personnel and encompasses communications with both governmental and private parties.

Over the past several weeks, Commissioner Ness and I participated in a number of discussions relating to the economics of access charge changes and universal service. Because a flurry of discussions occurred over a period of multiple days, in the midst of hundreds of other communications pertaining to dozens of other issues, it would be extremely difficult to recall specific dates, times, and participants in each individual conversation. The general thrust of the discussions can, however, be recounted with a high degree of accuracy.

The situation, as we came to understand it in late November, was that interexchange carriers, notably AT&T and MCI, were claiming that new universal service costs, coupled with the reconfiguration of access charges, would make it difficult for the carriers to provide their required support for universal service without raising rates for consumer services. We first learned of this in the context of reports on a meeting among representatives of various Senators, some of whom were reported to have expressed a strong interest in avoiding new line-item charges on consumers' telephone bills.

On December 3, I joined a number of representatives of the Commission in a lengthy meeting with 20-30 representatives of members of the Senate. The primary message communicated by those congressional aides who spoke during the meeting was that consumers should not experience rate increases attributable to implementation of the Telecommunications Act of 1996. My own comments at the meeting (and, to a lesser extent, in separate conversations with representatives of Senators Hollings, McCain, Rockefeller, and Stevens) centered on the following main points:

- The Commission shares the goal of Congress that the Telecommunications Act be a success. Throughout its implementation efforts, the Commission has consistently sought to effectuate the statutory goals of competition, universal service, and deregulation and to secure for consumers the benefits of increased choice, better service, lower prices, faster innovation, etc.

- The Commission's decisions in the access charge and universal service proceedings, in particular, were structured with the intent that the real (and perceived) benefits resulting from the Telecommunications Act would exceed the real (and perceived) costs. As expected when the access charge order was adopted in May, the access charge reductions in July 1997 brought rate decreases to all classes of users of interexchange services, including those ordering services from the basic rate schedule. The Commission's expectation at the time of the May orders was that interexchange carriers would enjoy access charge reductions in January 1998 that would approximate the amounts of their universal service contributions.

- The Commission had designed the universal service support mechanisms for schools, libraries, and rural health care to be funded on a "pay-as-you-go" basis. Because it could not predict with certainty the level of funding that would be needed in the future, the FCC fashioned a "spigot" so that collections for these mechanisms in any given quarter would not exceed the amounts reasonably expected to be needed.

- The current system of intercarrier and end-user pricing incorporates many implicit subsidies. As new explicit subsidy mechanisms are established, their costs ought to be more than offset by corresponding reductions in implicit subsidies, with the net effect that most consumers will be better off.

In the days following the meeting with Senate staff, Commissioner Ness and I spoke, separately or together, with Mike Armstrong, John Zeglis, Rick Bailey, and Betsy Brady of AT&T and with Tim Price, Jonathan Sallet, Len Sawicky, and Brad Stillman of MCI. We encouraged both companies to confer with the Common Carrier Bureau to ascertain with particularity the reasons for differing forecasts about the effects of access charge and universal service changes going into effect on January 1. Other points communicated by Commissioner Ness or myself in these conversations were the following:

- It seemed strange that carriers would feel so strongly about the need to establish explicit new line-item charges for universal service costs on their bills if they are not equally willing to establish separate line items to show cost reductions resulting from governmental actions, such as access charge reductions.

- The "presubscribed interexchange carrier charge" ("PICC") for primary line residential consumers was set at $0.53 for 1998 precisely because that is the per-line amount the interexchange carrier already paid under the pre-existing regime, and the Commission intended to avoid raising interexchange carriers' costs in a way that would justify their seeking to impose line-item charges on residential consumers.

- Imposing new charges on residential consumers, who have seen less in the way of tangible benefits from the Telecommunications Act than have business users, would likely generate considerable political controversy. While Commissioner Ness would continue to cast her vote in each proceeding on the basis of the applicable law and the record, a significant change in the political environment could have the potential to substantially affect Commission decisionmaking in a variety of contexts and make it more difficult for the Commission to continue its diligent efforts to implement the Telecommunications Act.

- The spending "caps" set for the school, library, and rural health support mechanisms were intended as ceilings and not as budgets. Representatives of numerous school and library organizations had represented to the Commission, on the record, that funding of $625 million for the first half of 1998 was likely to meet expected needs for schools and libraries. Commissioner Ness was agreeable to setting collection levels to allow for collection of that amount, as opposed to the $1 billion that was potentially permitted under the universal service order of May 1997.

In the course of these discussions, MCI asserted that it had already "spent" the access charge reductions expected on January 1, 1998, as well as those received July 1, 1997, in the form of reduced per-minute charges for long distance (e.g., "five-cent Sundays"). MCI expressed its intention to establish a single blended PICC for residential consumers because of its alleged inability to distinguish primary from secondary residential lines. MCI further advised us that it would feel a need to collect separately from end-users for universal service contributions even if schools and libraries funding were to be reduced to zero; contributions to cover high-cost and low-income funding, we were told, would necessitate this approach.

Separately, AT&T informed us that it intended not to establish a per-line PICC for primary residential lines unless competitive circumstances compelled it to do so. AT&T also stated that it did not expect to find it necessary to impose separate line-item universal service charges on residential consumers if universal service support for schools and libraries were to be reduced to the level proposed on May 1 in a letter signed by AT&T, Bell Atlantic, and NYNEX.

In a telephone conversation with Kathy Sloan of Worldcom, I covered in summary fashion some of the points that had been discussed with AT&T and MCI. My best recollection is that she expressed the view that her company would be likely to seek to recover universal service contributions through line-item charges, without regard to offsetting reductions in access charges. In a separate voice mail message, Rich Fructermann of Worldcom asserted that interexchange carriers other than AT&T have more revenues per line and so are disproportionately disadvantaged by collecting universal service contributions on a revenue as opposed to per-line basis.

In a separate telephone conversation, Frank Gumper of NYNEX questioned whether the interexchange carriers were being wholly forthcoming in their estimates of cost savings they would enjoy as a result of access charge changes.

In a telephone conversation, Ira Fishman, CEO of the Schools and Libraries Corporation, and I shared information we had received about the intentions of interexchange carriers to establish separate line-item charges, the import of Paragraph 855 of the universal service order (I also provided a copy of this paragraph to representatives of Senator Rockefeller), and the sentiments being expressed by congressional and administration officials.

Finally, Commissioner Ness had a brief conversation with Education Secretary Riley. He expressed his hope that the Commission would move forward to implement support for schools and libraries as scheduled, on January 1, 1998. Commissioner Ness stated that she was already committed to that objective so that all elements of the universal service program -- for high-cost areas, for low-income consumers, and for schools, libraries, and rural health care -- would now be operational.

Please contact me if you have any questions.